Bass & Bass Security *and* Local 819, Security Workers of America. Case 29–CA–25420

October 31, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND WALSH

The General Counsel seeks a default judgment[1] in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge and an amended charge filed by the Union on February 6 and June 9, 2003, respectively, the General Counsel issued the complaint on June 10, 2003, against Bass & Bass Security (the Respondent), alleging that it has violated Section 8(a)(1) and (5) of the Act. The Respondent failed to file an answer.

On July 7, 2003, the General Counsel filed a Motion for Summary Judgment with the Board. On July 10, 2003, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was filed by June 24, 2003, all the allegations in the complaint would be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that, on June 25, 2003, the Region, by letter and telephone, notified the Respondent that unless an answer was received by July 1, 2003, a Motion for Default Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Judgment

On the entire record, the Board makes the following

[1] The General Counsel's motion requests summary judgment on the ground that the Respondent has failed to file an answer to the complaint. Accordingly, we construe the General Counsel's motion as a motion for default judgment.

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a domestic corporation, with a facility located at 115-39 Dunkirk Street, St. Albans, New York (the St. Albans facility), has been engaged in providing security guard services to various New York City Department of Finance offices.

Based on a projection of its operations since about November 3, 2002, at which time the Respondent commenced its operations, the Respondent, in the course and conduct of its business operations described above, will annually provide services valued in excess of $50,000 directly to New York City, an entity directly engaged in interstate commerce.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Local 819, Security Workers of America (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Jerry Bass has been the Respondent's president, and has been an agent of the Respondent acting on its behalf, and a supervisor of the Respondent within the meaning of Section 2(11) of the Act.

The following employees of the Respondent (the unit) constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time security guards employed by Respondent at any and/all New York City Department of Finance offices as provided in the Agreement between Respondent and New York City, but excluding all other employees, professionals and supervisors as defined in the Act.

At all material times since at least 1997 until November 2, 2002, Exployer Investigation Agency (Exployer) was engaged in the business of providing security guard services to various New York City Department of Finance offices out of its New York City location and employed the employees of the Respondent in the unit.

At all material times since August 2002, until on or about November 2, 2002, the Union was the exclusive collective-bargaining representative of Exployer's employees in the unit, for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, and was recognized as such representative by Exployer. Such recognition was embodied in a collective-bargaining agreement, which was effective from August 5, 2002, to August 4, 2005.

At all material times until about November 3, 2002, when the Respondent took over the New York City Department of Finance security guard contract, based on Section 9(a) of the Act, the Union was the exclusive collective-bargaining representative of the unit employees employed by Explorer.

On or about a date presently unknown in late August/early to mid-September 2002, the New York City Department of Finance awarded the Respondent a contract previously held by Explorer to provide security guard services for various New York City Department of Finance locations, effective about November 3, 2002.

About November 2, 2002, Explorer ceased providing security guard services for the various New York City Department of Finance offices and since then and at all material times, the Respondent has been engaged in substantially the same business operations formerly engaged in by Explorer, out of its St. Albans facility.

About November 3, 2002, the Respondent hired a majority of its employees in the unit from among individuals who were previously employees of Explorer, and since then has continued to operate the same business as Explorer in basically unchanged form.

By virtue of the conduct described above, the Respondent has continued the employing entity and is a successor to Explorer.

At all material times since about November 3, 2002, when the Respondent began operating pursuant to its being awarded the New York City Department of Finance security guard contract, the Union has been the exclusive collective-bargaining representative of the Respondent's employees in the unit based on Section 9(a) of the Act.

Since about November 3, 2002, the Respondent unilaterally modified the terms of the collective-bargaining agreement by, inter alia:

(a) Changing the wages of unit employees.

(b) Ceasing to provide health benefits for unit employees.

(c) Eliminating paid vacation and personal days for unit employees.

(d) Decreasing paid holidays for unit employees, including but not limited to Christmas and New Year's Day.

The subjects set forth above relate to wages and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

The Respondent engaged in the conduct described above without prior notice to the Union, and without affording the Union an opportunity to bargain with respect to this conduct and the effects of this conduct.

About October 2, 2002, and January 28, 2003, the Union, by letter, requested that the Respondent recognize and bargain collectively with it as the exclusive collective-bargaining representative of employees in the unit.

On or about the following dates, by the following individuals, the Union orally requested that the Respondent recognize and bargain with the Union as the exclusive collective-bargaining representative of employees in the unit:

(a) On a date presently unknown in October 2002 by Vice President Parisi.

(b) On a date presently unknown in November 2002 by Vice President Parisi.

(c) On January 29, 2003, by President Sullivan.

Since about November 3, 2002, the Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit.[2]

CONCLUSION OF LAW

By refusing to recognize and bargain with the Union and unilaterally modifying the unit employees' terms and conditions of employment since November 3, 2002, by, inter alia, changing their wages, ceasing to provide them with health benefits, eliminating their paid vacation and personal days, and decreasing their paid holidays, including but not limited to Christmas and New Year's Day, the Respondent has failed and refused, and is failing and refusing, to bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of the unit employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act. See *NLRB v. Burns Security Services*, 406 U.S. 272 (1972).

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, we shall order the Respondent to recognize and, on request, bargain with the Union as the exclusive bargaining representative of the unit employees, and if an understanding is

[2] The complaint also alleges that, on a date presently unknown in October 2002, the Respondent, by Jerry Bass, at the New York City Department of Finance location in Queens, New York, told employees that the Respondent did not want a union and that the employees did not need a union. However, the complaint does not allege that this was a violation of the Act.

reached, embody the understanding in a signed agreement. In addition, we shall order the Respondent, on request, to rescind the unlawful unilateral changes to wages and benefits it made since November 3, 2002, and to make the unit employees whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful conduct. In order to remedy the Respondent's unlawful termination of health benefits for unit employees, we shall require the Respondent to restore the unit employees' health benefits, and to make all required benefit fund payments or contributions, if any, that have not been made since November 3, 2002, including any additional amounts applicable to such payments or contributions as set forth in *Merriweather Optical Co*., 240 NLRB 1213, 1216 (1979).[3] In addition, the Respondent shall reimburse unit employees for any expenses resulting from its unlawful termination of their health benefits, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981). All payments to employees shall be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Bass & Bass Security, St. Albans, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with Local 819, Security Workers of America, as the exclusive collective-bargaining representative for the unit described below:

> All full-time and regular part-time security guards employed by Respondent at any and/all New York City Department of Finance offices as provided in the Agreement between Respondent and New York City but excluding all other employees, professionals and supervisors as defined in the Act.

(b) Unilaterally modifying the unit employees' terms and conditions of employment by changing their wages, ceasing to provide them with health benefits, eliminating their paid vacation and personal days, and decreasing their paid holidays, including but not limited to Christmas and New Year's Day, without providing the Union with notice and an opportunity to bargain with respect to this conduct or its effects.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and, on request, bargain in good faith with the Union as the exclusive collective-bargaining representative of the unit employees, and if an understanding is reached, embody the understanding in a signed agreement.

(b) On request, rescind the unlawful unilateral changes to wages and benefits it made since November 3, 2002, and make the unit employees whole, with interest, for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful conduct, as set forth in the remedy section of this decision.

(c) Restore the unit employees' health benefits, make all required benefit fund payments or contributions, if any, that have not been made since November 3, 2002, and reimburse unit employees for any expenses resulting from its unlawful termination of their health benefits, with interest, as set forth in the remedy section of this decision.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in St. Albans, New York, copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the

[3] To the extent that an employee has made personal contributions to a benefit or other fund that have been accepted by the fund in lieu of the Respondent's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 3, 2002.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. October 31, 2003

Robert J. Battista,	Chairman
Wilma B. Liebman,	Member
Dennis P. Walsh,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with Local 819, Security Workers of America, as the exclusive collective-bargaining representative for the unit described below:

> All full-time and regular part-time security guards employed by us at any and/all New York City Department of Finance offices as provided in the Agreement between us and New York City but excluding all other employees, professionals and supervisors as defined in the Act.

WE WILL NOT unilaterally modify the unit employees' terms and conditions of employment by changing their wages, ceasing to provide them with health benefits, eliminating their paid vacation and personal days, and decreasing their paid holidays, including but not limited to Christmas and New Year's Day, without providing the Union with notice and an opportunity to bargain with respect to this conduct or its effects.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL recognize and, on request, bargain in good faith with the Union as the exclusive collective-bargaining representative of the unit employees and, if an understanding is reached, embody the understanding in a signed agreement.

WE WILL, on request, rescind the unlawful unilateral changes to wages and benefits we made since November 3, 2002, and WE WILL make the unit employees whole, with interest, for any loss of earnings and other benefits suffered as a result of our unlawful conduct.

WE WILL restore the unit employees' health benefits, make all required benefit fund payments or contributions, if any, that have not been made since November 3, 2002, and reimburse unit employees for any expenses resulting from our unlawful termination of their health benefits, with interest.

BASS & BASS SECURITY